

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

SD VOICE and Cory Heidelberger,)

Plaintiffs,)

Civ. 19- 1003

v.)

South Dakota Governor Kristi G. Noem,)

in her official capacity, South Dakota)

Attorney General Jason Ravnsborg, in)

his official capacity, and South Dakota)

Secretary of State Steve Barnett, in his)

official capacity,)

Defendants.)

Complaint for Preliminary and Permanent Injunction

Parties

1. SD Voice is a grassroots ballot question committee, registered with the State of South Dakota, which is dedicated to supporting ballot measures that strengthen democracy and opposing ballot measures that weaken it.

2. Cory Heidelberger is a resident of Aberdeen, South Dakota, who operates SD Voice and shares its goals.

3. SD Voice and Heidelberger have a practical, concrete, compelling, constitutional interest in regaining the rights—unlawfully taken from them by IM 24—to obtain money contributions from persons who are not residents of the state at the time of the contribution, political committees that are organized outside South Dakota, and entities that are not filed as an entity with the secretary of state for the four years preceding their contribution, who wish to contribute to the ballot questions promoted by SD Voice and Heidelberger.

4. Kristi G. Noem is the Governor of South Dakota and is sued in her official capacity.

5. Jason Ravnsborg is the Attorney General of South Dakota and is sued in his official capacity.

6. Steve Barnett is the Secretary of State of South Dakota and is sued in his official capacity.

Jurisdiction

7. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3).

Facts

8. IM 24, enacted by the voters of South Dakota in November, 2018, provides: "Any contribution to a statewide ballot question committee by a person who is not a resident of the state at the time of the contribution, a political committee that is organized outside South Dakota, or an entity that is not filed as an entity with the secretary of state for the four years preceding such contribution is prohibited."

9. IM 24 provides civil and criminal penalties for its violation.

10. This lawsuit seeks a preliminary and permanent injunction against the enforcement of IM 24, because it is patently unconstitutional under the First Amendment to the United States Constitution, the Dormant Commerce Clause of the United States Constitution, and the Equal Protection clause of the Fourteenth Amendment.

11. Although IM 24 is not effective until July 1, 2019, if this lawsuit is delayed until IM 24 becomes effective, this lawsuit will not be resolved—assuming the party or parties that lose in this Court appeal to the Eighth Circuit, and the party or parties that lose in the Eighth Circuit seek review in the Supreme Court—until well after the November 4, 2019 deadline for submitting ballot question petitions, and possibly after the November 3, 2020, general election, thereby leaving in effect a blatantly unconstitutional law that criminalizes lawful political speech and trashes the United States Constitution.

12. IM 24 right now chills lawful political activity protected by the United States Constitution, because it denies ballot question committees vital and constitutionally protected rights beginning July 1, 2019.

13. Defendants are charged with enforcing IM 24, and unless restrained, will enforce it.

14. Money from non-residents was significant in passing Initiated Measure 21 in 2016, an ethics reform measure that gained a majority of votes.

15. Out of state money has been and is commonly used in political campaigns, including ballot campaigns, in South Dakota and the rest of the United States.

16. Even the defendants support out-of-state money being used in South Dakota elections, because they all took out-of-state money in their South Dakota political campaigns.

17. South Dakota, in 1898, was the first state to allow the people the right to bring initiated measures and referenda statewide.

18. With IM 24, South Dakota became the first state to ban out-of-state money from state ballot question committees.

19. Although parochialism ("South Dakota elections should be decided by South Dakota money") has its defenders, IM 24's parochialism must yield to the Constitution of the United States.

20. The First Amendment allows political freedom and freedom of speech. The Dormant Commerce Clause allows economic freedom, and has prevented the balkanization of the United States into 50 separate entities. The Equal Protection Clause allows individual freedom in many different contexts, including political campaigns, as held in *Bush v. Gore*, 531 U.S. 98 (2000).

21. SD Voice has already obtained the Secretary of State's approval to circulate a petition for a ballot initiative to appear on the 2020 general election ballot

to strengthen democracy by removing restrictions imposed by the Legislature on the initiative process.

22. SD Voice has already received out-of-state money in support of its petition drive.

23. As of July 1, 2019, IM 24 will unconstitutionally prohibit all non-resident donors from making any further contributions.

24. The seed money received by SD Voice in February 2019 will help it launch its petition drive and demonstrate to future donors the viability of SD Voice's campaign.

25. SD Voice needs the coming months to build its circulation network, collect thousands of signatures, and demonstrate to potential donors that the campaign is viable and is worth their investment.

26. By the time that SD Voice is able to provide compelling evidence of the viability of its petition drive in the summer of 2019 to other potential non-resident donors, IM 24 will prohibit them from providing support for the initiative—support that would help SD Voice publicize its efforts, recruit more circulators, conduct complicated compliance requirements, and complete its petition drive by November 4, 2019, as required.

27. If SD Voice can submit the required thousands of valid South Dakota voter signatures to the Secretary of State by November 4, 2019, IM 24 will prohibit non-resident donors from providing vital financial support to SD Voice's ballot measure during the 2020 campaign.

28. In sum, although IM 24 is not effective until July 1, 2019, it effectively deters lawful political activity now.

29. By chilling the free expression of donors and denying SD Voice vital resources, IM 24 unreasonably burdens the ability of SD Voice to petition and advocate for ballot measures, and thereby denies South Dakotans the opportunity to learn about and cast an educated vote on ballot measures.

30. SD Voice wants and needs the opportunity to accept out-of-state money after July 1, 2019—and to do the other activities prohibited by IM24—as guaranteed by the Constitution of the United States.

Cause of Action

31. IM 24 is unconstitutional on its face and as applied to plaintiffs, under the First Amendment to the United States Constitution, the Dormant Commerce Clause of the United States Constitution, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

32. This action is brought pursuant to 42 U.S.C. 1983 and 42 U.S.C. 1985(3).

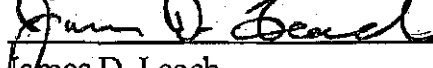
Request for Relief

Plaintiffs request this Court to:

1. Grant a preliminary and permanent injunction against defendants barring them from enforcing or threatening to enforce IM 24;
2. Grant plaintiffs their attorney fees and costs pursuant to 42 U.S.C. § 1988; and
3. Grant such other and further relief as it deems just.

Dated: March 1, 2019

/s/ James D. Leach



James D. Leach

Attorney at Law

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Attorney for Plaintiffs

CIVIL COVER SHEET

19-1003

JS 44 (Rev. 02/19)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SD VOICE and Cory Heidelberger

(b) County of Residence of First Listed Plaintiff Brown
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
James D. Leach/Attorney at Law/1617 Sheridan Lake Rd/Rapid City, SD
57702/605 341 4400

DEFENDANTS

SD Gov. Kristi G. Noem, SD Atty Genl Jason Ravnsborg, and SD
Secty of State Steve Barnett, all sued in their official capacities

County of Residence of First Listed Defendant Hughes
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question
(U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief description of cause:
Unconstitutionality of Initiated Measure 24

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/1/19

SIGNATURE OF ATTORNEY OF RECORD

James D. Leach

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE